

**To the Task Force: At our last meeting, we ended up delaying action on part of the definition of ancillary bodies because it was so confusing – this was Section 1.2.020 (C), which is on pages 5-6 of document A-2. Here’s another attempt at some clarity, and at look at the underlying issue we want to address – namely, how to insure the public has sufficient information about the decisions of any body that performs governmental functions. Thanks for consideration of these ideas. Susan.**

### **Suggestion for Definition of Ancillary Bodies**

Section 1.2.020(C) is designed to ensure that when the government delegates authority to a private entity – such as the operation of the Rep, for example -- the performance of government functions does not suddenly become secret. There are two reasons for this: (1) In an age of outsourcing, private entities increasingly are being used by local governments to perform tasks the government previously performed; and (2) such a provision is necessary to ensure that local government does not shield certain activities from public scrutiny by shifting them to private entities.

The Task Force has stressed that the San Jose Sunshine Ordinance should be at least as protective of open government as the Brown Act, and should improve on the Brown Act wherever possible. It has also looked at what other Sunshine ordinances have done, because they show problems others have also encountered, and the solutions they have been implemented.

To put this into context, I’m providing the current language of Section 1.2.020(C), the related provisions of the Brown Act, similar provisions in other Sunshine Ordinances, and a proposal for a new version of Section 1.2.020(C).

[If you want to skip the background, just read this paragraph and the proposed new language:](#) **The new language tries to make it clear that the meeting requirements for ancillary bodies will apply to private entities that manage public facilities or perform government functions, but only to meetings at which those subjects are discussed. It also addresses concerns expressed by staff about what a “government function” is, and whether existing contracts will have to be renegotiated.**

#### **1. Here’s the current draft language (Section 1.2.020(C)).**

To the extent not inconsistent with state or federal law, any entity that owns, operates or manages any property in which the City or City Redevelopment Agency has or will have an ownership interest, including a mortgage, and on which property the entity performs a governmental function or service. To the extent not inconsistent with state or federal law, any contract with or grant to such an entity must include a requirement that any meeting of the governing board of the entity to address any matter relating to the property or its government-related activities, or performance under the contract or grant, be conducted as provided in accordance with the provisions of this Chapter governing ancillary bodies.

Records made available to the governing board of any such entity relating to such matters shall be likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per page, or at a higher actual cost as demonstrated in writing to such governing board.

*(Note: This is very similar to Oakland and San Francisco ordinances.)*

**2. Here's what the Brown Act says (Section 54952(c))—a “legislative body” includes:**

A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

*(Note: These categories are addressed in the definition of “policy body.”)*

**3. Here's what other ordinances say:**

**Oakland:**

**SECTION 2.20.040 Conduct of Meetings for Additional Bodies Covered by the Ordinance.**

*(A) To the extent not inconsistent with state or federal law, a local body shall require, as a condition of any express delegation of power to any public agency, including joint powers authorities, or other person(s), whether such delegation of power is achieved by legislative act, contract, lease or other agreement, that any meeting by such a public agency or other person(s) at which an item concerning or subject to the delegated power is discussed or considered, shall be conducted pursuant to the Ralph M. Brown Act (Government Code Section 54950 et seq.).*

*(B) To the extent not inconsistent with state or federal law, a private entity that owns, operates or manages any property in which the City, Redevelopment Agency, or the Port Department has or will have an ownership interest, including a mortgage, and on which property the private entity performs a governmental function or service, shall conduct any meeting of its governing board at which an item relating to the administration of the*

*property or the public function or service is discussed or considered subject to the following conditions:*

(1) Such meetings need not be formally noticed, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually

prepared for the meeting be made available upon request;

(2) Such meetings need not be conducted in any particular location to accommodate spectators, although spectators shall be permitted to observe on a space available basis consistent with

legal and practical restrictions on occupancy;

(3) Such business meetings need not provide opportunities for comment by spectators, although the governing board may, in its discretion, entertain questions or comments from spectators as may be relevant to the item considered; and,

(4) The private entity or persons may restrict the attendance of spectators only to the specific item(s) directly relating to the administration of the property or of the public function or

service and, as to such specific item(s), may prohibit the attendance of spectators during the discussion or consideration of any item that would be the permitted subject of a closed session hearing under the Ralph M. Brown Act.

## **San Francisco**

### **SEC. 67.4. PASSIVE MEETINGS.**

*(b) To the extent not inconsistent with state or federal law, a policy body shall include in any contract with an entity that owns, operates or manages any property in which the City has or will have an ownership interest, including a mortgage, and on which the entity performs a government function related to the furtherance of health, safety or welfare, a requirement that any meeting of the governing board of the entity to address any matter relating to the property or its government related activities on the property, or performance under the contract or grant, be conducted as provided in subdivision (a) of this section. Records made available to the governing board relating to such matters shall be likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per page, or at a higher actual cost as demonstrated in writing to such governing board.*

#### **4. Here's a proposed new version of Section 1.2.020(C):**

1. Any board or other multi-member body that governs a corporation, non-profit organization, or other entity that:

a. Owns, operates or manages any property in which the City has an ownership interest; and

b. Performs a governmental function or service on the property.

2. Only meetings of the governing board at which an item relating to the administration of the property or the public function or service provided by the entity are subject to the requirements of this section. For purposes of this section, a "government

function” is any function that the City is required or authorized by law to provide, perform or control, including the ownership and management of real property and facilities.

3. To the extent not inconsistent with state or federal law, any contract with or grant to an entity subject to this section must include a requirement that any meeting of the governing board of the entity to address matters relating to the administration of the property or the public function or service provided by the entity be conducted in accordance with the provisions of this Chapter governing ancillary bodies. This section does not require the renegotiation of any contract or grant existing at the time it is adopted, but does apply to future grants or contracts, including existing grants or contracts renewed or renegotiated pursuant to their terms or by agreement of the parties.